

State to more than 1,000 enrollees, the following additional information:

- (i) Total earned premium on individual market health insurance products in the State;
- (ii) Reported MLR pursuant to State law for the individual market business in the State;
- (iii) Estimated MLR for the individual market business in the State, as determined in accordance with §158.221 of this part;
- (iv) Total agents' and brokers' commission expenses on individual health insurance products;
- (v) Estimated rebate for the individual market business in the State, as determined in accordance with §158.221 and §158.240 of this part;
- (vi) Net underwriting profit for the individual market business and consolidated business in the State;
- (vii) After-tax profit and profit margin for the individual market business and consolidated business in the State;
- (viii) Risk-based capital level; and
- (ix) Whether the issuer has provided notice of exit to the State's insurance commissioner, superintendent, or comparable State authority.

§ 158.322 Proposal for adjusted medical loss ratio.

A State must provide its own proposal as to the adjustment it seeks to the MLR standard. This proposal must include:

- (a) An explanation and justification of how the proposed adjustment to the MLR was determined;
- (b) An explanation of how an adjustment to the MLR standard for the State's individual market will permit issuers to adjust current business models and practices in order to meet an 80 percent MLR as soon as is practicable;
- (c) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet an 80 percent MLR for the applicable MLR reporting years; and
- (d) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet the adjusted MLR proposed by the State for the applicable MLR reporting years.

§ 158.323 State contact information.

A State must provide the name, telephone number, e-mail address, and mailing address of the person the Secretary may contact regarding the request for an adjustment to the MLR standard.

§ 158.330 Criteria for assessing request for adjustment to the medical loss ratio.

The Secretary may consider the following criteria in assessing whether application of an 80 percent MLR, as calculated in accordance with this subpart, may destabilize the individual market in a State that has requested an adjustment to the 80 percent MLR:

- (a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State. In making this determination the Secretary may consider as to each issuer that is reasonably likely to exit the State:

- (1) Each issuer's MLR relative to an 80 percent MLR;
- (2) Each issuer's solvency and profitability, as measured by factors such as surplus level, risk-based capital ratio, net income, and operating or underwriting gain;
- (3) The requirements and limitations within the State with respect to market withdrawals; and
- (4) Whether each issuer covers less than 1,000 life-years in the State's individual insurance market.

- (b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR.

- (c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.

- (d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market, including:

- (1) Any requirement that issuers who exit the State's individual market must have their block(s) of business assumed by another issuer;

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(2) The issuers that may remain in the State subsequent to the implementation of the 80 percent MLR, as calculated in accordance with this Part, and the nature, terms, and price of the products offered by such issuers;

(3) The capacity of remaining issuers to write additional business, as measured by their risk based capital ratios;

(4) The mechanisms, such as guaranteed issue products, an issuer of last resort, or a State high risk pool, available to the State to provide coverage to consumers in the event of an issuer withdrawing from the market, and the affordability of these options compared to the coverage provided by exiting or potentially exiting issuers; and

(5) Any authority the State's insurance commissioner, superintendent, or comparable official may exercise with respect to stabilization of the individual insurance market.

(e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market.

(f) Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.

§ 158.340 Process for submitting request for adjustment to the medical loss ratio.

(a) *Electronic submission.* A State must submit electronically, to an address and in a format prescribed by the Secretary, all of the information required by this subpart in order for its request for an adjustment to the MLR standard for its individual market to be considered by the Secretary.

(b) *Submission by mail.* A State may also submit by overnight delivery service or by U.S mail, return receipt requested, to an address and in a format prescribed by the Secretary, its request for an adjustment to the MLR standard for its individual market.

§ 158.341 Treatment as a public document.

A State's request for an adjustment to the MLR standard, and all information submitted as part of its request, will be treated as a public document

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and will be posted promptly on the Secretary's Internet Web site devoted to health care coverage.

§ 158.342 Invitation for public comments.

The Secretary will invite public comment regarding a State's request for an adjustment to the MLR standard. All public comments must be submitted in writing within 10 days of the posting of the request, and must be submitted in the manner prescribed by the Secretary. The Secretary will consider timely public comments in assessing a State's request for an adjustment to the MLR standard.

§ 158.343 Optional State hearing.

Any State that submits a request for adjustment to the MLR standard may, at its option, hold a public hearing and create an evidentiary record with respect to its application. If a State does so, the Secretary will take the evidentiary record of the hearing into consideration in making her determination.

§ 158.344 Secretary's discretion to hold a hearing.

The Secretary may, at her discretion, conduct a public hearing with respect to a State's request for an adjustment to the MLR standard. All testimony and materials received in connection with any public hearing will be made part of the public record, and shall be considered by the Secretary in assessing a State's request for an adjustment to the MLR standard.

§ 158.345 Determination on a State's request for adjustment to the medical loss ratio.

(a) *General time frame.* The Secretary will make a determination as to whether to grant a State's request for an adjustment to the MLR standard within 30 days after determining that the information required by this subpart has been received.

(b) *Extension at the discretion of the Secretary.* The Secretary may, in her discretion, extend the 30 day time period in paragraph (a) of this section for as long a time as necessary not to exceed 30 days.